

**Chapter 523: Waste Discharge License Conditions**

**SUMMARY:** This rule contains requirements for conditions which are applicable to all waste discharge licenses (or "permits") or categories of licenses issued by the Department. Additionally, the rule provides procedures and considerations for establishing effluent limitations, compliance schedules, special conditions and monitoring requirements. The content of this rule is largely taken from federal regulations, and most references and terms are in the context of the Code of Federal Regulations. To aid the reader, a citation to the appropriate federal regulation is shown in each section of this rule.

**Section 1. References to Federal Regulations and definitions.** Portions of this rule refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those regulations effective as of July 1, 1998, as they appear in volume 40 of the Code of Federal Regulations (CFR). Definitions for terms used in this rule may be found Chapter 520.

**Section 2. Conditions applicable to all permits.** [see 40 CFR 122.41] The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in Section 3. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit.

- (a) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.
  - (1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
  - (2) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.
- (b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

- (c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- (d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- (e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- (f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- (g) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.
- (h) Duty to provide information. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.
- (i) Inspection and entry. The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:
  - (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
  - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
  - (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
  - (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.
- (j) Monitoring and records.

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
  - (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
  - (3) Records of monitoring information shall include:
    - (i) The date, exact place, and time of sampling or measurements;
    - (ii) The individual(s) who performed the sampling or measurements;
    - (iii) The date(s) analyses were performed;
    - (iv) The individual(s) who performed the analyses;
    - (v) The analytical techniques or methods used; and
    - (vi) The results of such analyses.
  - (4) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, unless other test procedures have been specified in the permit.
  - (5) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.
- (k) Signatory requirement.
- (1) All applications, reports, or information submitted to the Department shall be signed and certified. (See Chapter 521, Section 5)
  - (2) State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.
- (l) Reporting requirements.
- (1) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
    - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

- (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section 3 (a)(1).
  - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (2) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (3) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.
- (4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
  - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
  - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.
  - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.
- (5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (6) Twenty-four hour reporting.
  - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time

it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

- (ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

- (A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See Section 2(g)).

- (B) Any upset which exceeds any effluent limitation in the permit.

- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours. (See Section 5 (g).)

- (iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.

- (7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (l) (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

- (8) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

(m) Bypass--

- (1) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.

- (3) Notice--

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice).

(4) Prohibition of bypass.

- (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
  - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (C) The permittee submitted notices as required under paragraph (m)(3) of this section.
- (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) Upset--

- (1) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (2) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (3) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph (1)(6)(ii)(B) of this section (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

- (4) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**Section 3. Additional conditions applicable to specified categories of NPDES permits.** [see 40 CFR 122.42] The following conditions, in addition to those set forth in Section 2, apply to all NPDES permits within the categories specified below:

- (a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under Section 2(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:
- (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
    - (i) One hundred micrograms per liter (100 ug/l);
    - (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
    - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
    - (iv) The level established by the Department in accordance with Section 5(f).
  - (2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
    - (i) Five hundred micrograms per liter (500 ug/l);
    - (ii) One milligram per liter (1 mg/l) for antimony;
    - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7).
    - (iv) The level established by the Department in accordance with Section 5(f).
- (b) Publicly owned treatment works. All POTWs must provide adequate notice to the Department of the following:
- (1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants; and
  - (2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
  - (3) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated

impact of the change on the quantity or quality of effluent to be discharged from the POTW.

- (c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under Chapter 521 Section 9(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:
  - (1) The status of implementing the components of the storm water management program that are established as permit conditions;
  - (2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with Chapter 521 Section 9(d)(2)(iii); and
  - (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Chapter 521 Sections 9(d)(2)(iv) and (v);
  - (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;
  - (5) Annual expenditures and budget for year following each annual report;
  - (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;
  - (7) Identification of water quality improvements or degradation;
- (d) Storm water discharges. The initial permits for discharges composed entirely of storm water issued pursuant to Chapter 521 Section 9(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

**Section 4. Establishing permit conditions.** [see 40 CFR 122.43]

- (a) In addition to conditions required in all permits (Sections 2 and 3), the Department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of CWA and regulations and State law. These shall include conditions under 38 MRSA, Chapter 3 (duration of permits), Section 7(a) (schedules of compliance), and Section 8 (monitoring).
- (b)
  - (1) An applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in 38 MRSA, §414-A(5).

- (2) New or reissued permits, and to the extent allowed under 38 MRSA, §414-A(5) modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 5 and 6.
- (c) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

**Section 5. Establishing limitations, standards, and other permit conditions.** [see 40 CFR 122.44]

In addition to the conditions established under Section 4(a), each NPDES permit shall include conditions meeting the following requirements when applicable.

- (a) Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under section 301 of CWA or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or on a combination of the two, in accordance with Chapter 523, Section 2. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d) (protection period).
- (b)
  - (1) Other effluent limitations and standards under sections 301, 302, 303, 307, 318 and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also Section 2(a).
- (c) Reopener clause: for any discharger within a primary industry category (see appendix A), requirements under section 307(a)(2) of the CWA as follows:
  - (1) On or before June 30, 1981:
    - (i) If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of the CWA and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

- (ii) If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations. (if EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the Federal Register that the limitations are ``approved" for the purpose of this regulation.)
  - (2) On or after the statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of the CWA, any permit issued shall include effluent limitations to meet the requirements of section 301(b)(2) (A),(C), (D), (E), (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by paragraph (c)(1) of this section.
  - (3) The Department shall promptly modify or revoke and reissue any permit containing the clause required under paragraph (c)(1) of this section to incorporate an applicable effluent standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) of the CWA which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.
- (d) Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of the CWA necessary to:
- (1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.
    - (i) Limitations must control all pollutants or pollutant parameters (either conventional, non conventional, or toxic pollutants) which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.
    - (ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and non point sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.
    - (iii) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.
    - (iv) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for

whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

- (v) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet of the NPDES permit, using the procedures in paragraph (d)(1)(ii) of this section, that chemical- specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.
- (vi) Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:
  - (A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion maybe derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or
  - (B) Establish effluent limits on a case-by-case basis, using EPA's Water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or
  - (C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:
    - (1) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;
    - (2) The fact sheet required by Chapter 522 Section 7 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;
    - (3) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and
    - (4) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

- (vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:
  - (A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and
  - (B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.
- (2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;
- (3) [reserved];
- (4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;
- (5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA;
- (6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;
- (7) [reserved];
- (8) Incorporate alternative effluent limitations or standards where warranted by ``fundamentally different factors," under Chapter 524.
- (e) Technology-based controls for toxic pollutants. Limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under Chapter 522 Section 7(b)(1)(i).
  - (1) Limitations must control all toxic pollutants which the Department determines (based on information reported in a permit application under Chapter 521 or in a notification under Section 3(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under Chapter 524; or
  - (2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (e)(1) of this section will be satisfied by:
    - (i) Limitations on those pollutants; or

- (ii) Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by Chapter 524.
- (f) Notification level. A "notification level" which exceeds the notification level of Section 3(a)(1)(i), (ii) or (iii), upon a petition from the permittee or on the Department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under Chapter 524 Section 2(II)(c).
- (g) Twenty-four hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under Section 2(1)(6)(ii)(C) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.
- (h) Durations for permits, as set forth in 38 MRSA, Sections 414(2) and 414-A(1-B).
- (i) Monitoring requirements. In addition to Section 8, the following monitoring requirements:
  - (1) To assure compliance with permit limitations, requirements to monitor:
    - (i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;
    - (ii) The volume of effluent discharged from each outfall;
    - (iii) Other measurements as appropriate including pollutants in internal waste streams under Section 6(i); pollutants in intake water for net limitations under Section 6(f); frequency, rate of discharge, etc., for non continuous discharges under Section 6(e); pollutants subject to notification requirements under Section 3(a)..
    - (iv) According to test procedures approved under 40 CFR part 136 for the analyses of pollutants having approved methods under that part, and according to a test procedure specified in the permit for pollutants with no approved methods.
  - (2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.
  - (3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.
  - (4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature

and effect of the discharge. At a minimum, a permit for such a discharge must require:

- (i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;
  - (ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;
  - (iii) Such report and certification be signed in accordance with Chapter 521 Section 5; and
  - (iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.
- (5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under Sections 2(l) (1), (4), (5) and (6) at least annually.
- (j) Pretreatment program for POTWs. Requirements for POTWs to:
- (1) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of CWA and Chapter 528.
  - (2) Submit a local program when required by and in accordance with Chapter 528 to assure compliance with pretreatment standards to the extent applicable under CWA section 307(b). The local program shall be incorporated into the permit as described in Chapter 528. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Chapter 528.
- (k) Best management practices to control or abate the discharge of pollutants when:
- (1) Authorized under section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;
  - (2) Numeric effluent limitations are infeasible, or
  - (3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of CWA and State law.
- (l) Reissued permits.

- (1) Except as provided in paragraph (1)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 38 MRSA, Sections 414-A(5) and 341-D.
- (2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.
  - (i) Exceptions--A permit with respect to which paragraph (1)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if--
    - (A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;
    - (B)
      - (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or
      - (2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b) of the CWA;
    - (C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;
    - (D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or
    - (E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).
  - (ii) Limitations. In no event may a permit with respect to which paragraph (1)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a

permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 of the CWA applicable to such waters.

- (m) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this Chapter. Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Department's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.
- (n) Grants. Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.
- (o) [reserved]
- (p) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.
- (q) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 40 CFR 124.58.

**Section 6. Calculating NPDES permit conditions.** [see 40 CFR 122.45]

- (a) Outfalls and discharge points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Section 5(k) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).
- (b) Production-based limitations.
  - (1) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.
  - (2)
    - (i) Except in the case of POTWs or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual

production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(ii)

(A)

- (1) The Department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.
- (2) For the automotive manufacturing industry only, the Regional Administrator shall, and the Department may establish a condition under paragraph (b)(2)(ii)(A)(1) of this section if the applicant satisfactorily demonstrates to the Director at the time the application is submitted that its actual production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(B) If the Department establishes permit conditions under paragraph (b)(2)(ii)(A) of this section:

- (1) The permit shall require the permittee to notify the Department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit.  
The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.
- (2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Department under paragraph (b)(2)(ii)(B)(1) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.
- (3) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(c) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR part 136 unless:

- (1) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or
  - (2) In establishing permit limitations on a case-by-case basis under Chapter 524 Section 2(II), it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or
  - (3) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).
- (d) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:
- (1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and
  - (2) Average weekly and average monthly discharge limitations for POTWs.
- (e) Non-continuous discharges. Discharges which are not continuous, as defined Chapter 520, shall be particularly described and limited, considering the following factors, as appropriate:
- (1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);
  - (2) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);
  - (3) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and
  - (4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (1/4 kilogram) of zinc in any discharge).
- (f) Mass limitations.
- (1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:
    - (i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;
    - (ii) When applicable standards and limitations are expressed in terms of other units of measurement; or
    - (iii) If in establishing permit limitations on a case-by-case basis under Chapter 524 Section 2(II), limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for

example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

- (2) Pollutants limited in terms of mass additionally may be limited terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) Pollutants in intake water

- (1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:
  - (i) The applicable effluent limitations and standards contained in Chapter 525 specifically provide that they shall be applied on a net basis; or
  - (ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.
- (2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
- (3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.
- (4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Department may waive this requirement if it finds that no environmental degradation will result.
- (5) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(h) Internal waste streams.

- (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(i) shall also be applied to the internal waste streams.
- (2) Limits on internal waste streams will be imposed only when the fact sheet under Chapter 522 sets forth the exceptional circumstances which make such limitations

necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

- (i) Disposal of pollutants into wells, into POTWs or by land application. Permit limitations and standards shall be calculated as provided in Section 9.

**Section 7. Schedules of compliance.** [see 40 CFR 122.47]

- (a) General. The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations.

- (1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.
- (2) The first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.
- (3) Interim dates. Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
  - (i) The time between interim dates shall not exceed 1 year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.
  - (ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

Note: Examples of interim requirements include: (a) Submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities.

- (4) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the

Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(3)(ii) is applicable.

**Section 8. Requirements for recording and reporting of monitoring.** [see 40 CFR 122.48]

All permits shall specify:

- (a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
- (b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;
- (c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Section 5. Reporting shall be no less frequent than specified in the above regulation.

**Section 9. Disposal of pollutants into wells, into publicly owned treatment works or by land application.** [see 40 CFR 122.50]

- (a) When part of a discharger's process wastewater is not being discharged into waters of the State or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in an NPDES permit shall be adjusted to reflect the reduce draw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:
  - (1) If none of the waste from a particular process is discharged into waters of the State, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.
  - (2) In all cases other than those described in paragraph (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the State, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Chapter 524 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = (E \times N) \div T$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State, and T is the total wastewater flow.

- (b) Paragraph (a) of this section does not apply to the extent that promulgated effluent limitations guidelines:
  - (1) Control concentrations of pollutants discharged but not mass; or
  - (2) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.
- (c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements established under Sections 2, 3, 4, and 5.

**Section 10. Conditions requested by the Corps of Engineers and other government agencies.** [see 40 CFR 124.59]

- (a) If during the comment period for an NPDES draft permit, the District Engineer advises the Department in writing that anchorage and navigation of any of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advised the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Department shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in 40 CFR part 124. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that stay.
- (b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department shall include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of 40 CFR 122.49 and of the CWA.
- (c) In appropriate cases the Department may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

**AUTHORITY:** 38 MRSA §§ 341-D and 414-A

**EFFECTIVE DATE:** This rule will become effective upon the approval of the U.S. Environmental Protection Agency of related parts of the State's application to administer the National Pollutant Discharge Elimination System program of the Federal Clean Water Act, pursuant to 40 CFR part 123.

**Appendix A. NPDES Primary Industry Categories**

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See 40 CFR 122.44 and 122.46.

**Industry Category**

Adhesives and sealants  
Aluminum forming  
Auto and other laundries  
Battery manufacturing  
Coal mining  
Coil coating  
Copper forming  
Electrical and electronic components  
Electroplating  
Explosives manufacturing  
Foundries  
Gum and wood chemicals  
Inorganic chemicals manufacturing  
Iron and steel manufacturing  
Leather tanning and finishing  
Mechanical products manufacturing  
Nonferrous metals manufacturing  
Ore mining  
Organic chemicals manufacturing  
Paint and ink formulation  
Pesticides  
Petroleum refining  
Pharmaceutical preparations  
Photographic equipment and supplies  
Plastics processing  
Plastic and synthetic materials manufacturing  
Porcelain enameling  
Printing and publishing  
Pulp and paper mills  
Rubber processing  
Soap and detergent manufacturing  
Steam electric power plants  
Textile mills  
Timber products processing